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6 Attorneys for Creditors Trustees of the Screen
7 Actors Guild-Producers Pension and Health
Plans

8 UNITED STATES BANKRUPTCY COURT
9 STATE OF NEW YORK, SOUTHERN DISTRICT

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11 In re
12 MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*,
13 Debtor.
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CASE NO. 09-50026 (REG)

Chapter 11

**TRUSTEES OF THE SCREEN
ACTORS GUILD-PRODUCERS
PENSION AND HEALTH PLANS
RESPONSE TO DEBTORS' EIGHTY-
FIFTH OMNIBUS OBJECTION TO
CLAIMS (CLAIM #1039)**

Judge: Hon. Robert E. Gerber
Date: October 26, 2010
Time: 9:45 a.m.
Ctrm.: 621
One Bowling Green
New York, New York 10004

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21 The Trustees of the Screen Actors Guild Producers Pension and Health Plans
22 ("Trustees") hereby respond to the Debtors' Eighty-Fifth Omnibus Objection to Claims as
23 follows. The Trustees administer a pension and health plan serving individuals performing
24 acting services in a number of entertainment related industries, including the advertising
25 industry. The Plans are third-party beneficiaries of collective bargaining agreements
26 negotiated by the Screen Actors Guild and advertisers such as the Debtors, and advertising
27 agencies such as Campbell-Ewald, retained by the Debtors to produce television
28 commercials marketing the Debtors' products. Beginning in 2007, the Trustees sought to

1 review certain celebrity endorsement agreements for performers such as John Mellencamp
2 and Duke NCAA coaching great Mike Krzyzewski. Mr. Mellencamp, and other
3 celebrities hired by the Debtors agreed to exclusively promote the Debtors products in a
4 variety of media (television, print and radio) in exchange for large compensation packages.
5 Each endorsement agreement recites the services to be performed by the celebrity,
6 including those services covered by the SAG Commercials Contract. The services covered
7 by the SAG Commercials Contract, largely television and internet, are highly
8 compensated. The Trustees are entitled to pension and health contributions measured by a
9 percentage of the compensation paid for the covered acting services provided by John
10 Mellencamp, and the other performers. These contributions underwrite the pension and
11 health benefits enjoyed by the participants in the Plans.

12 Beginning with audit announcements letters (exhibit A to the Declaration of Peter
13 S. Dickinson, "Dickinson Declaration"), the Trustees sought access to the endorsement
14 agreements to determine the scope of services performed by the celebrity and the amount
15 of compensation paid for those services. By comparing these amounts, the Trustees are
16 able to determine whether all contributions owed were in fact paid. The Trustees' audit
17 identified numerous instances where the Debtors and the Debtors' agency failed to
18 properly report and pay the contributions. The Trustees are owed \$175,542.20 in
19 delinquent contributions; in addition, the Trustees are entitled to 20% liquidated damages
20 of the delinquency (\$35,108.44), for a total amount of \$210,650.64 (Dickinson
21 Declaration, Exhibit E), plus legal and audit costs, and interest as proved. Although the
22 Debtors' Omnibus Objection states that the Trustees did not respond to the Debtors request
23 for information (page 20), this is incorrect as the Trustees sought to provide the Debtors
24 with sufficient information to review and allow the claims. The Trustees filed a Proof of
25 Claim for Unliquidated Claims on August 13, 2009 (Dickinson Declaration, Exhibit F.)
26 On or about February 16, 2010, the Trustees received from Debtor Motors Liquidation
27 Company a Demand for a Liquidated Amount (Dickinson Declaration, Exhibit G.) On
28 March 4, 2010, the Trustees sent a responsive letter and an attached spreadsheet by

1 overnight mail to debtor Motor Liquidation Company setting forth a liquidated amount
2 with respect to Proof of Claim No. 1039 (Dickinson Declaration, Exhibit H.) There is a
3 variation between the March 4, 2010 claim amount of \$193,361.40, and the \$210,650.64,
4 or a difference of \$17,289.23. The increase is based on additional information obtained
5 since the March 4, 2010 submission.

6 In support of this Response, the Trustees submit the following documents attached
7 to the Declaration of Peter S. Dickinson filed herewith:

- 8 A. Communications between Plans' auditors and General Motors
9 Corporation or its advertising agency Campbell-Ewald;
- 10 B. Excerpts from the 2003 Commercials Contract between the Screen
11 Actors Guild and the ANA-AAAA Joint Policy Committee on
12 Broadcast Talent Union Relations acting on behalf of advertisers and
13 advertising agencies; schedule of contribution percentages.
- 14 C. Trust Agreement of the Screen Actors Guild-Producers Pension Plan
15 for Motion Picture Actors entered into as of February 1, 1960 (as
16 amended);
- 17 D. Trust Agreement of the Screen Actors Guild-Producers Health Plan for
18 Motion Picture Actors entered into as of February 1, 1960 (as
19 amended);
- 20 E. Summary of the delinquency in contributions;
- 21 F. Proof of Claim for Unliquidated Claims filed by the SAG-Producer
22 Pension and Health Plans on August 13, 2009;
- 23 G. Debtors' demand for a liquidated amount, received February 16, 2010;
- 24 H. The liquidated amount with supporting spreadsheet submitted by the
25 Plans on March 4, 2010.

26 This documentation provides sufficient support for the Debtors, and this Court to
27 deny the Objection to the Trustees' Claims and allow the Trustees' claims in the amount of
28 \$210,650.64.

1 The Trustees respectfully request that the Objection to the Trustees claim be denied,
2 and that the claim be allowed in its entirety.
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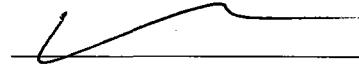
4 DATED: October 18, 2010

Respectfully submitted,

5 PETER S. DICKINSON
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8

9 By:

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PETER S. DICKINSON

11 Attorneys for Creditors Trustees of the Screen
12 Actors Guild-Producers Pension and Health Plans

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